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13 CHURCH OF SCIENTOLOGY INTERNATIONAL

14 UNITED STATES BANKRUPTCY COURT

15 NORTHERN DISTRICT OF CALIFORNIA

16 In re

17 GERALD ARMSTRONG,

18 Debtor

) CASE NO. 95-10911 aj  
)  
) CHURCH OF SCIENTOLOGY  
) INTERNATIONAL'S REPLY  
) MEMORANDUM IN SUPPORT OF  
) MOTION FOR RELIEF FROM  
) STAY  
)  
) [11 U.S.C. §362(d)(1)]  
)  
) DATE: May 25, 1995  
) TIME: 9:00 a.m.  
) CTRM: Hon. Alan Jaroslovsky  
)

## I. INTRODUCTION

Debtor Gerald Armstrong ("Armstrong")'s response to the motion for relief from stay filed by creditor Church of Scientology International ("the Church") demonstrates dramatically why the relief which the Church seeks is both appropriate and necessary.

The state court case has been pending for more than three years. During that time, Armstrong has raised every possible defense, resorted to every possible ruse, and thrown every possible piece of muck which he could at the Church. Through it all, the Church has steadfastly and determinedly demanded only one thing: Armstrong must abide by the terms of the settlement agreement which he signed in 1986, and for which he received \$800,000. The state court, painstakingly sifting through the asserted defenses, claimed excuses, and mounds of mud, has, in every instance, upheld the validity of the Church's claims. Unhappy with the inevitable result of the state court proceedings, Armstrong has chosen to deluge a new court with the same mountain of assertions, excuses and mud that was so unsuccessful for him in the state court. There is no need for this Court to undertake the task of re-determining the issues which have already been decided by the state court, nor is there any need for this Court to attempt to complete the task which the state court had nearly finished. Nothing in the mountain of paper filed by Armstrong provides a single reason why this Court should not grant the Church the precise and limited relief from stay which it seeks.

## II. GRANTING THE MOTION FOR STAY WILL NOT PREJUDICE ARMSTRONG, BUT DENYING THE MOTION WILL SERIOUSLY PREJUDICE THE CHURCH

The central theme of Armstrong's declaration is that the Church is "attacking" him, and the Court should feel sorry for his plight. His claimed inability to defend the state court action is proffered as a reason to prevent the Church from obtaining final adjudication of the state law issues that are raised in the case. However, as the evidence filed in support of the moving papers amply demonstrates, it is not the Church that is attacking Gerald Armstrong. The Church made peace with Armstrong in 1986, and, on very specific terms and conditions, paid a substantial sum for that peace. Armstrong's choice was to give away his assets, and embark on a course of conduct which is nothing more than calculated and deliberate harassment of his



1 former faith while believing himself judgment proof. Now, he seeks to cloak his activities with  
2 the protection of the bankruptcy court.

3 The harm which the Church is seeking to prevent by re-activating the state court action  
4 is real, and immediate. There is presently a preliminary injunction in the state court action  
5 which limits some, but not all, of the types of breaches of the agreement which Armstrong has  
6 committed. It does not cover breaches for which the Church is entitled to liquidated damages.  
7 In light of Armstrong's claimed present penniless state, the injunction needs to be expanded,  
8 immediately, as the harm which the Church faces for any breach by Armstrong is, apparently,  
9 incompensable with monetary damages. The Church's pending motion for permanent injunction,  
10 fully briefed and ready for decision by the state court, seeks this relief. Without this protection,  
11 Armstrong can and will continue to violate the agreement which four courts have upheld, and  
12 for which the Church paid \$800,000. This prejudice to the Church is real, present and  
13 continuing. Further, the relief which the Church seeks is not a "vendetta" or the "destruction  
14 of Gerald Armstrong," as Armstrong so dramatically proclaims. [Armstrong Dec. at 6.] The  
15 relief which the Church seeks is to obtain, in a court of law, the benefit of the bargain for which  
16 it bargained and paid in 1986. Armstrong agreed to keep silent about his Scientology knowledge  
17 and experiences, and he agreed not to aid anti-Scientology litigants. The Church desires a  
18 permanent injunction enforcing these promises.

19 In addition, the Church is asking that the state court be permitted to complete the case,  
20 by ascertaining the full extent of the Armstrong's monetary liability. Armstrong may believe  
21 that he has successfully conveyed and hidden his assets so that his creditors will collect nothing  
22 from the bankruptcy estate. However, the trustee in bankruptcy has already expressed an  
23 interest in pursuing the pending fraudulent conveyance action on behalf of the estate. Among  
24 the assets at issue there are, inter alia, a house valued at \$600,000, and the "forgiveness" of  
25 several substantial debts. It is thus far from academic for the Church to have determined the  
26 exact amount of its claim, and it makes sense for the state court familiar with the parties and  
27 issues to make that determination.

28 Moreover, the Church was required to post a bond of \$70,000 in order to obtain the



1 preliminary injunction. Once an order of permanent injunction is entered (or that relief refused  
2 after trial), the preliminary injunction will be vacated, and the Church will have its funds  
3 returned. For the Church to be forced to wait for the return of this bond until after the  
4 conclusion of Armstrong's bankruptcy case is, again, prejudicial to the Church. And the  
5 prejudice is unnecessary, since a determination concerning the state court bond could not  
6 possibly diminish the bankruptcy estate.<sup>1</sup>

7 As demonstrated in the Moving Papers, and unrefuted by Armstrong, "no case has found  
8 the cost of defending, by itself, to be 'great prejudice' as to bar modification of the stay." In  
9 re Harris, 85 B.R. 858, 860 (Bkrcty.D.Colo. 1988), quoting, In re Phillips 40 B.R. 194, 197  
10 (D.Colo. 1984). However, each of Armstrong's claims boils down to nothing more than an  
11 assertion that it would be costly for him to defend the state court action.

12 For example, Armstrong claims that he would be prejudiced in the state court action if  
13 he were forced to go forward with it because he no longer has a lawyer, and intimates that the  
14 Church was somehow responsible for this condition. Nothing could be farther from the truth.  
15 Mr. Greene acted for years as Armstrong's attorney, but "became disheartened" (to quote  
16 Armstrong) when his client refused to even discuss reasonable settlement offers in the face of  
17 certain defeat. [Bartilson Dec., ¶ 2.] Armstrong's claim that "Scientology" filed five "spurious"  
18 bar complaints against Greene, and that this influenced Greene's decision to stop representing  
19 Armstrong, is also false,. The truth is that one of the Church's attorneys filed a complaint  
20 concerning Mr. Greene with the state bar, concerning perjury by Mr. Greene, in January, 1991,  
21 long before Armstrong retained Mr. Greene. [Bartilson Dec., ¶ 3.] The complaint was not  
22 spurious: a warning letter was subsequently issued to Mr. Greene. [Ex. A to Bartilson  
23 Declaration.] Thereafter, in February, 1992, the Church filed a bar complaint concerning Mr.  
24 Greene and the Church's former attorney, Joseph Yanny, over conflict of interest issues.  
25 [Bartilson Dec., ¶ 4.] Again, this was before Mr. Greene undertook any representation of

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26  
27 <sup>1</sup> Indeed, it is theoretically possible that the court will vacate the preliminary injunction after  
28 trial on the merits, and order the Church to pay costs to Armstrong, from the bond. This would  
enlarge, rather than diminish, the bankruptcy estate.



1 Armstrong: the Church did not even file the complaint against Armstrong in the state court  
2 action until February, 1992. [Ex. D to Request for Judicial Notice.]<sup>2</sup> Nor did the Church send  
3 anyone to "infiltrate" Mr. Greene's office. Armstrong's allegation is based on the false  
4 declaration of Gary Scarff -- a declaration which Mr. Scarff repudiated in 1993. [Ex. B, to  
5 Bartilson Declaration.]

6 Nor has Armstrong proffered any reason why his other attorney in the state court action,  
7 Paul Morantz, is no longer representing him. The timing of Armstrong's substitution of himself  
8 as counsel in pro per -- immediately after the Church obtained a partial judgment for \$100,000 -  
9 - permits the strong inference that this is simply another tactic calculated to obtain further delay,  
10 and to create sympathy for Armstrong.

11 Similarly, Armstrong's claim that the pendency of the state court action somehow  
12 impaired his ability to obtain gainful employment is both frivolous, and a sham on this Court.  
13 On March 10, 1995, Armstrong swore under penalty of perjury that he was engaged in full time  
14 employment in Mr. Greene's office. [Ex. C to Bartilson Declaration, Declaration of Gerald  
15 Armstrong, March 10, 1995, ¶6.] On April 19, 1995, he filed a bankruptcy petition in this  
16 Court in which he stated, again under oath, that he was unemployed. [Ex. KK to Moving  
17

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18 <sup>2</sup> Armstrong's claims that Greene's former clients, the Aznarans, were being paid by the Church  
19 to allow Greene to sue the Church on their behalf is even more ludicrous. In that federal court  
20 action, Greene did next to nothing to prosecute the case. Finally, anxious to end litigation,  
21 Church representatives went directly to the Aznarans and effected a settlement. According to  
22 Vicki Aznaran,

23 Greene did not communicate with us regarding activities in our lawsuit and  
24 often could not be contacted for extended periods of time. It is my belief that at  
25 least one of these periods of non-communication was due to the fact that he had  
26 entered a drug rehabilitation program without even informing us that he intended  
27 to do so. Ford Greene did nothing effective to settle our case. In fact, he told  
28 me he was worried about settling our case as my husband and I would no longer  
be witnesses for Gerry Armstrong who is a client of Ford Greene and involving  
in Scientology related litigation. . . .

\* \* \*

26 Greene's inactivity, neglect, mismanagement and failure to communicate  
27 with us endangered our lawsuit. In our view, Mr. Greene's failure to prosecute  
28 this case is tantamount to malpractice. . . .

Exhibit D to Bartilson Dec., Declaration of Vicki Aznaran, ¶¶ 16, 19.



1 Papers.] Now, on May 11, 1995, Armstrong claims that he has again begun working for Mr.  
2 Greene full time. [Armstrong Dec., ¶10.] Obviously, the Church had nothing to do with  
3 Armstrong's employment situation: his desire to appear insolvent before this Court did.

4 Moreover, Armstrong's assertions that the Church has "interfered" with his employment  
5 by "harassing" him are equally ludicrous. The Church has objected only to Armstrong's  
6 employment, contrary to his settlement obligations, by attorneys litigating against the Church  
7 or related entities on cases involving Scientology. Indeed, by proving that Armstrong was doing  
8 just that, the Church obtained the preliminary injunction in the state court, which is still in  
9 effect. The Court of Appeal found that:

10 In support of its motion for a preliminary injunction, Church presented  
11 evidence that since June 1991 Armstrong had violated the agreement by working  
12 as a paralegal for attorneys representing clients engaged in litigation against  
13 Church and by voluntarily and gratuitously providing evidence for such litigation.  
14 Armstrong worked as a paralegal for Attorney Joseph Yanny, who represented  
15 Richard and Vicki Aznaran in a multimillion dollar suit against Church in federal  
16 court. Armstrong also voluntarily provided declarations for use in the Aznarans'  
17 case. Armstrong thereafter worked for Attorney Ford Greene on the Aznaran and  
18 other Church related matters.

19 Armstrong did not deny the charged conduct but asserted the settlement  
20 agreement was not enforceable for various reasons, primarily that it was against  
21 public policy and that he signed it under duress.

22 [Ex. U To Request for Judicial Notice, Moving Papers, Opinion, at 5.]

23 The Court of Appeal proceeded to evaluate and reject Armstrong's arguments, upholding  
24 the preliminary injunction, which specifically prohibits Armstrong from

25 Voluntarily assisting any person (not a governmental organ or entity)  
26 intending to make, intending to press, intending to arbitrate, or intending to  
27 litigate a claim against the persons referred to in sec. 1 of the "Mutual Release  
28 of All Claims and Settlement Agreement" of December, 1986 regarding such  
claim or regarding pressing, arbitrating, or litigating it;

and

Voluntarily assisting any person (not a governmental organ or entity)  
arbitrating or litigating a claim against the persons referred to sec. 1 of the  
"Mutual Release of All Claims and Settlement Agreement" of December, 1986.

[Ex. H to Request for Judicial Notice, Moving Papers, at 2.]

In short, to answer the question Armstrong poses ("Where else in the world can I go for  
work?"): he may work for any lawyer he likes. California has thousands. The **only** thing that



1 he may not do is work on anti-Scientology cases. By doing so, he violates the settlement  
2 agreement. He also violates the preliminary injunction, and risks contempt of court. Absolutely  
3 nothing prevents him from working for the hundreds of thousands of attorneys in this state, or  
4 the rest of the country, who are not litigating against any Church of Scientology or related  
5 entity.

6 Armstrong's disjointed declaration demonstrates no real harm to Armstrong or the  
7 bankruptcy estate that would occur should this Court grant the Church relief from stay; and the  
8 evidence provided by the Church demonstrates both that Armstrong will suffer no harm, and that  
9 the Church is severely prejudiced by the stay. Under these circumstances, the relief requested  
10 should be granted.

### 11 **III. ARMSTRONG'S VOLUMINOUS SUBMISSION DOES NOT PROVE** 12 **THE ONLY POINT FOR WHICH IT WAS OFFERED**

13 Armstrong states that he has filed a massive stack of documents in this Court just to show  
14 that he has not "been willfully dilatory." [Armstrong Declaration at 3.] The Church, in its  
15 moving papers, set forth the entire history of the state court action, describing the many delays  
16 procured by Armstrong and his counsel. [Moving Papers at 3 - 11.] Armstrong has attached to  
17 his opposition a stack of paper more than 15 inches high, which he contends are identical to his  
18 "Evidence in Support of Opposition to [the Church of] Scientology [International]'s Motion for  
19 Summary Adjudication of the 20th Cause of Action; and 13th, 16th, 17th and 19th Causes of  
20 Action of Second Amended Complaint." [Armstrong Dec. at 3.] However, none of the papers  
21 which Armstrong so attaches were actually timely filed in opposition to those summary  
22 adjudication motions. [Declaration of Laurie J. Bartilson, ¶ 7.] Indeed, in opposition to those  
23 motions, which were due to be decided by the state court 2 days after Armstrong filed his  
24 petition for bankruptcy, Armstrong filed only a single, third party declaration -- and he filed it  
25 late, without obtaining the permission of the court. [Id.] The papers which Armstrong has filed  
26 in this Court are a separate statement (never filed or served in the state court action), several  
27 declarations from his friends concerning Armstrong's alleged "saintliness" and the alleged  
28 "unChristian" nature of Scientology, and a compendium of declarations and exhibits, all of



1 which were previously filed by Armstrong in support of various motions in the state court case.

2 None of this paper sheds any light on the issues presented by the motion for relief from  
3 stay; moreover, none of it "proves" that Armstrong wasn't dilatory. The real circumstances are  
4 quite simple: Armstrong did not have any of this paper prepared or filed in time for it to be  
5 considered on the pending motions; the state court determined that he had been dilatory, and  
6 denied his application for a continuance; he filed for bankruptcy to avoid the consequences.  
7 Indeed, Armstrong's dilatory efforts (including filing reams of irrelevant paper, as here) kept  
8 the state case from going to trial for more than three years, and are still keeping it from going  
9 to trial.

10 Because none of the exhibits to Armstrong's declaration have any bearing on the motion  
11 to stay, many of them are prejudicial to the Church, and some of them contain confidential  
12 Church scripture, the Church has separately filed a motion to strike all of the  
13 exhibits. The Church asks that these documents be returned to Armstrong forthwith.

#### 14 **IV. THE CHURCH HAS DEMONSTRATED GOOD CAUSE** 15 **FOR RELIEF FROM STAY**

16 As the Church demonstrated in the Moving Papers, and unrefuted by Armstrong, by far  
17 the largest number of relief from stay cases proceed with an analysis of whether or not the  
18 requested relief will promote the policy of judicial economy. Relief is certainly appropriate  
19 when state court resolution of an issue is imminent. In In re Universal Life Church, Inc., 127  
20 B.R. 453, 455 (E.D. Cal. 1991), for example, the Internal Revenue Service sought relief from  
21 stay to allow a tax court action to proceed. In granting the relief requested, the bankruptcy court  
22 found the tax court's special expertise in the area to be of paramount importance. The tax court  
23 action was begun in 1985 and had been pending for nearly four years when, on the eve of trial,  
24 the debtor filed a motion seeking to amend its tax court petition to permit the use of a different  
25 installment method of accounting. On the day after this motion to amend was denied, the debtor  
26 filed a Chapter 11 petition, which automatically stayed the tax court proceedings. In a holding  
27 which is surely applicable here, the court stated: "The automatic stay in this case should be  
28 modified to permit the tax court to finish what it had nearly completed." Id.



1 The state court action in this case has been pending for more than three (3) years. The  
2 Church has successfully obtained summary judgment on two claims for breach of the agreement,  
3 and has been awarded \$100,000 in liquidated damages. On April 21, the state court was to  
4 decide motions for summary judgment on four more claims for breach, which would have  
5 resulted in another \$200,000 in liquidated damages, and also on the Church's motion for  
6 summary judgment of its cause of action for a permanent injunction. Trial was set for May 18.  
7 As in In re Universal Life Church, Inc., supra, the automatic stay should be modified to "permit  
8 [the Marin County Superior Court] to finish what it had nearly completed." 127 B.R. at 455.

9 Further, relief from stay is proper in this instance to permit the state court to decide  
10 issues of state law which are within its unique province. This is because "[a] clear congressional  
11 policy exists to give state law claimants a right to have claims heard in state court." In re  
12 Castlerock Properties., supra, 781 F.2d at 163. The issues presented by the state case here are  
13 purely state law issues; the Church could not have commenced the state court action in a federal  
14 court for want of any subject matter jurisdiction; and the issues will indeed be timely adjudicated  
15 if the relief from stay sought here is granted.

16 The Church here seeks relief from stay only to the extent necessary to allow its breach  
17 of contract claims to become liquidated and to adjudicate its claim for a permanent injunction.  
18 The proposed order specifically provides that, if those claims are decided in the Church's favor,  
19 it will take no action to enforce its claims against the estate. The fact that the Church does not  
20 seek to pursue assets of the estate should be given significant weight. In re Hohol, 141 B.R.  
21 at 297. Further, as the court recognized in In re Olmstead, 606 F.2d 1365, 1367-1368 (10th  
22 Cir. 1979), it is certainly appropriate for a bankruptcy court to defer any determination which  
23 it might make until the creditor's claim was liquidated in another court of competent jurisdiction.

## 24 V. CONCLUSION

25 Armstrong has done nothing to refute the Church's showing that it is entitled to relief  
26 from the automatic stay provisions of Section 362 so that it can pursue, to conclusion, its state  
27 court claims for breach of contract. Instead, Armstrong has wasted the resources and time of  
28 this Court by filing seven volumes of irrelevant documents in an effort to show that the Church



1 is "bad" and he is "good". Such a transparent attempt to influence the Court with irrelevancies  
2 simply destroys the time of all concerned. For all of the reasons stated herein, and in the moving  
3 papers, the Church's motion for relief from stay should be granted.


4 Dated: May 20, 1995

Respectfully submitted,

5 Andrew H. Wilson  
6 Shauna T. Rejkowski  
7 WILSON, RYAN & CAMPILONGO

8 MOXON & BARTILSON

9 By:

  
Laurie J. Bartilson

10 Attorneys for Creditor  
11 CHURCH OF SCIENTOLOGY  
12 INTERNATIONAL  
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PROOF OF SERVICE

STATE OF CALIFORNIA        )  
                                  ) ss.  
COUNTY OF LOS ANGELES    )

I am employed in the County of California, State of California. I am over the age of eighteen (18) years and not a party to the within action. My business address is 6255 Sunset Boulevard, Suite 2000, Hollywood, CA 90028.

On May 20, 1995, I served the foregoing document described as CHURCH OF SCIENTOLOGY INTERNATIONAL'S REPLY MEMORANDUM IN SUPPORT OF MOTION FOR RELIEF FROM STAY on interested parties in this action,

[ ] by placing the true copies thereof in sealed envelopes as stated on the attached mailing list;

[X] by placing [ ] the original [X] true copies thereof in sealed envelopes addressed as follows:

GERALD ARMSTRONG  
715 Sir Francis Drake Blvd.  
San Anselmo, CA 94960-1949

Jeffrey G. Locke, Trustee  
P.O. Box 488  
Kentfield, CA 94914-0488

[X] BY MAIL

[ ] \*I deposited such envelope in the mail at Los Angeles, California. The envelope was mailed with postage thereon fully prepaid.

[X] As follows: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing an affidavit.



Executed on May 20, 1995, at Los Angeles, California.

[ ] \*\*(BY PERSONAL SERVICE) I delivered such envelopes by hand to the offices of the addressees.

Executed on \_\_\_\_\_, at Los Angeles, California.

[X] (State) I declare under penalty of the laws of the State of California that the above is true and correct.

[ ] (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

\_\_\_\_\_  
Print or Type Name

\_\_\_\_\_  
Signature

\* (By Mail, signature must be of person depositing envelope in mail slot, box or bag)

\*\* (For personal service signature must be that of messenger)